

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Robert Brown)	File Number: EB-10-BS-0050
)	NAL/Acct. No.: 201132260002
Boston, Massachusetts)	FRN: 0020036992
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 22, 2012

Released: June 22, 2012

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (MO&O), issued pursuant to Section 405 of the Communications Act of 1934, as amended (Act),¹ and Section 1.106 of the Commission's rules (Rules),² we dismiss as untimely the petition for reconsideration (*Petition*)³ filed by Robert Brown in response to the *Forfeiture Order* issued by the Enforcement Bureau's Northeast Region.⁴ The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$15,000 for willful and repeated operation of an unlicensed transmitter on the frequency 99.7 MHz in Boston, Massachusetts, in violation of Section 301 of the Act.⁵

II. BACKGROUND

2. On October 1, 2010, the Enforcement Bureau's Boston Office issued a Notice of Apparent Liability for Forfeiture (*NAL*) to Mr. Brown for operation of an unlicensed broadcast station on the frequency 99.7 MHz in Boston, Massachusetts.⁶ As detailed in the *NAL*, agents determined that an unlicensed radio station identifying itself as "Datz Hits Radio" operated on 99.7 MHz from 61 Ormond Street in the Mattapan neighborhood of Boston, Massachusetts, on October 5, 2009, and on February 11, 2010. Mr. Brown met with agents at 61 Ormond Street on October 5, 2009, along with Lloyd Morris. Mr. Brown and Mr. Morris identified themselves as the station's owners and operators.⁷ Notwithstanding

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.106.

³ See Robert Brown Petition for Reconsideration (filed June 17, 2011, in EB-10-BS-0050) (*Petition*). We note that, although the *Petition* is dated June 8, 2011, it was not received by the Commission until June 17, 2011.

⁴ Robert Brown, Forfeiture Order, 26 FCC Rcd 6854 (Enf. Bur., Northeast Region 2011) (*Forfeiture Order*).

⁵ 47 U.S.C. § 301.

⁶ Robert Brown, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (Enf. Bur., Boston Office 2010) (*NAL*).

⁷ The Bureau also assessed a forfeiture for \$15,000 against Lloyd Morris for engaging in the same unauthorized operations as Mr. Brown. See Lloyd Morris, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13736 (Enf. Bur., Boston Office 2010). Like Mr. Brown, Mr. Morris also failed to pay the proposed forfeiture or file a timely response to the notice of apparent liability for forfeiture issued against him. See Lloyd Morris, Forfeiture Order, 26 FCC Rcd 6856 (Enf. Bur., Northeast Region 2011). Further, like Mr. Brown, Mr. Morris filed an untimely petition for reconsideration. See Lloyd Morris, Memorandum Opinion and Order, DA 12-930 (rel. June 22, 2012).

the issuance of an on-scene Notice of Unauthorized Operation (NOUO) and a verbal warning at the inspection on October 5, 2009, as well as a written NOUO sent by regular and certified mail on October 15, 2009, the station was found operating again on February 11, 2010. In the *NAL*, the Boston Office found that Mr. Brown apparently willfully and repeatedly operated a radio station without the requisite Commission authorization in violation of Section 301 of the Act. Mr. Brown failed to file a response to the *NAL* or pay the proposed forfeiture within 30 calendar days from October 1, 2010, the release date of the *NAL*. The Enforcement Bureau's Northeast Region, therefore, proceeded to issue a forfeiture order on May 17, 2011, which required Mr. Brown to pay the \$15,000 forfeiture within 30 calendar days from release of the *Forfeiture Order*. Mr. Brown has not paid the forfeiture. On June 17, 2011, Mr. Brown filed his *Petition*.

3. In his *Petition*, Mr. Brown asserts that he did not respond to the *NAL* because of his "inability to obtain proper advice on actions to take and how to file a response."⁸ Mr. Brown further asserts that he operated the station in order to provide a "cultural listening experience" to the diverse Caribbean population living in the Boston area, and that the station now operates via the Internet only.

III. DISCUSSION

4. Section 405(a) of the Act, as implemented in Section 1.106(f) of the Commission's Rules, requires a petition for reconsideration to be filed *within* thirty (30) days of the date from which public notice of the action is given.⁹ In this particular case, public notice of the action was given on May 17, 2011, the date the *Forfeiture Order* was released. Therefore, a petition for reconsideration of the *Forfeiture Order* had to be filed with the Commission by June 16, 2011, the 30th day after May 17, 2011, in order to be considered timely.¹⁰ Mr. Brown's *Petition*, however, was not filed until June 17, 2011, one day after the *Petition* was due. The time period for filing petitions for reconsideration is prescribed by statute, and the Commission may not, with one narrow exception, waive or extend the filing period. The narrow exception to the statutory filing period allows the Commission to extend or waive the 30-day filing period only in "extraordinary circumstances," such as where the late-filing is due to the Commission's failure to give a party timely notice of the action for which reconsideration is sought.¹¹ In such circumstances, the petitioner must demonstrate that the delay in filing is attributable to Commission error in giving notice and that it acted promptly upon discovering the adoption of the Commission's decision.¹² Mr. Brown, in his *Petition*, does not argue that the delay in filing is attributable to Commission error in giving notice.¹³ Because we have no basis to extend or waive the 30-day filing period, we must dismiss Mr. Brown's *Petition*.¹⁴

5. Even if we were to consider Mr. Brown's *Petition* on the merits, we would deny it. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in

⁸ *Petition* at 2.

⁹ 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

¹⁰ See 47 C.F.R. §§ 1.106(f), 1.4(j).

¹¹ See *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976).

¹² *Sunjet Car Service, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 25451 (Enf. Bur. 2000) (citing *Stephen E. Powell*, 11 FCC Rcd 11925 (1996)).

¹³ The Bureau sent a copy of the *Forfeiture Order* to Mr. Brown by First Class Mail and by Certified Mail, Return Receipt Requested, at this address of record. He does not dispute that proper service was completed.

¹⁴ See, e.g., *Washington Broadcast Management Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 6607 (2000); *Bay Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 23449 (Enf. Bur. 2000).

the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.¹⁵ Mr. Brown does not claim that there was a material error or omission with respect to the *Forfeiture Order*. Instead, Mr. Brown attempts to justify the seven-month delay in filing his response to the *NAL*, which he asserts was due to difficulties seeking "proper advice" for what actions to take and in filing a response. Even if the response to the *NAL* were timely submitted, Mr. Brown's explanation is not a sufficient basis to excuse the delay, especially since the *NAL* provided explicit instructions regarding the filing of a response.¹⁶ In addition, Mr. Brown attempts to justify the unauthorized operation based on his personal view that he was providing a useful service to the Caribbean population in the Boston area, and that, in any event, he is now operating via Internet only. While his asserted objective may be laudable under different circumstances, it does not serve to excuse the fact that he operated a radio station without an FCC license and, therefore, in violation of Section 301 of the Act. Furthermore, the fact that Mr. Brown may have ceased the unauthorized broadcast, and is now providing programming via the Internet only, does not serve to mitigate the violations.¹⁷ We note that the violations in this case were found to be particularly egregious because Mr. Brown continued to violate the law despite the FCC's repeated warnings and letters ordering him to cease his unauthorized broadcast.¹⁸ Therefore, even if the *Petition* were not time-barred, we find that none of Mr. Brown's arguments would have justified cancellation or reduction of the forfeiture.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,¹⁹ and Section 1.106 of the Commission's rules,²⁰ the *Petition* for Reconsideration filed by Robert Brown **IS DISMISSED** and the *Forfeiture Order* **IS AFFIRMED**.

7. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311, and 1.80(f)(4) of the Rules,²¹ Robert Brown **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violations of Section 301 of the Act.

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) days of the release of this Memorandum Opinion and Order. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement pursuant to Section 504(a) of the Act.²² The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must also be submitted. An FCC Form 159 may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁵ See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257 (Enf. Bur. 2000) (citing *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)).

¹⁶ *NAL*, 25 FCC Rcd at 13742–43, paras. 11 & 13.

¹⁷ See, e.g., *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099, 6099, para. 7 (1994) (corrective action taken to comply with the Rules is expected, and does not mitigate any prior forfeitures or violations); *United States Cellular Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 16424, 16429, para. 14 (2007) (remedial efforts taken after the deadline did not mitigate violation of the Commission's E911 rules and relevant orders).

¹⁸ See *NAL*, 25 FCC Rcd at 13741–42, paras. 8–9.

¹⁹ 47 U.S.C. § 405.

²⁰ 47 C.F.R. § 1.106.

²¹ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

²² 47 U.S.C. § 504(a).

When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. Requests for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²³ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or E-mail: ARINQUIRIES@fcc.gov. Robert Brown shall also send electronic notification on the date said payment is made to NER-response@fcc.gov.

9. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order shall be sent by both first class mail and certified mail, return receipt requested, to Robert Brown at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

²³ See 47 C.F.R. § 1.1914.